

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 762 of 1995

in

SPECIAL CIVIL APPLICATION No. 12508 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER  
and  
MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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BHARATIYA CONSUMERS PROTECTION& SERVICE SOCIETY

Versus

STATE OF GUJARAT

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Appearance:

MR AK CLERK for Petitioner

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CORAM : MR.JUSTICE C.K.THAKKER and  
MISS JUSTICE R.M.DOSHIT

Date of decision: 06/10/97

ORAL JUDGEMENT {Per : Thakkar, J.}

In a well considered order, the learned Single Judge held that the provisions of Conditions of Supply & Miscellaneous Charges prescribed by the respondents pursuant to which a Notification is issued on October 14, 1994 cannot be said to be illegal, ultra vires, arbitrary or otherwise unreasonable. So far as the provisions of Section 21 of the Indian Electricity Act, 1910 are concerned, the vires or constitutional validity thereof was not challenged. In view of that fact, the learned Single Judge dealt with the matter on merits and held that the provisions as stood and notification as issued in exercise of powers cannot be said to be illegal or ultra vires. Regarding observance and compliance with the principles of natural justice and/or opportunity to file objections, the learned Single Judge placed reliance on a decision of the Hon'ble Supreme Court in Messrs. Jagdamba Paper Industries (Pvt.) Limited & Others v. Haryana State Electricity Board & Others., AIR 1983 SC 1296 wherein provisions of Section 49 of the Electricity {Supply} Act, 1948 was upheld by the Court. Considering the said section, the Hon'ble Supreme Court observed "It is open to the parties to unilaterally revise the conditions of supply of electricity." Again, a similar question arose before the Apex Court in Ferro Alloys Corporation Limited v. A.P. State Electricity Board & Another., AIR 1993 SC 2005, wherein certain guidelines have been laid down by Their Lordships.

It is true that in both the cases, the Apex Court was called upon to decide the constitutional validity of Section 49 of Electricity (Supply) Act, 1948. In the instant case constitutional validity of the provisions of the Parent Act i.e., Section 21 of the Electricity Act, 1910 is not challenged, the only question which arose for determination before the learned Single Judge was as to whether in the facts and circumstances of the case, could it be said that the prescription of conditions of supply and miscellaneous charges be said to be arbitrary or otherwise unreasonable on the ground that the principles of natural justice were not complied with. In our view, in the light of law laid down by Their Lordships of the Supreme Court in above two referred decisions, it cannot be said that merely on the ground that the principles of natural justice have not been complied with, fixation of charges and conditions of supply could be said to be illegal or ultra vires.

The learned counsel for appellant relied on Scheduled Caste & Weaker Section Welfare Association & Another v. State of Karnataka & Ors., AIR 1991 SC 1117;

and K.I Shephard v. Union of India, AIR 1988 SC 686. The learned Single Judge, in our opinion, was right in observing that the facts of those cases were in different and when the relevant case law was available pertaining to supply of electricity in the above two referred cases, the learned Single Judge, in our opinion, was right in basing his decision on those cases.

The learned counsel for appellant also drew our attention to various clauses of Conditions of Supply & Miscellaneous Charges in juxta position of the provisions of the Indian Electricity Act, 1910 and Indian Electricity Rules, 1956. Though there was no such inconsistency, in our opinion, when no concrete case has been pointed out to us, we refrain from deciding academic issue. As and when such a question would arise, the authority will decide the same in accordance with law.

For the foregoing reasons, we do not interfere with the order passed by the learned Single Judge. The present Letters Patent Appeal deserves to be dismissed, and is accordingly dismissed with no order as to costs.

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Prakash\*

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